Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

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This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 82–3)

Bonds

Approval of Carrier's Bond, Customs Form 3587, amendment of T.D. 81–137.

T.D. 81–137 relating to the temporary approval of the Carrier's Bond of the following principal is hereby amended as necessary to show that such bond has been permanently approved as noted below.

Dated: December 23, 1981.

213848

Principal: Central States Trucking Co.
Effective date of Permanent Authority: December 16, 1981.

GEORGE C. STEUART
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 81–114)

MATSUSHITA ELECTRIC INDUSTRIAL CO. LTD., ET AL., PLAINTIFFS, *v.* UNITED STATES, ET AL., DEFENDANTS

Before WATSON, *Judge.*

Consolidated Court No. 81–7–00901

Motion To Dismiss

[Denied.]

(Dated December 15, 1981)

Frederick L. Ikenson, P.C. (*Frederick L. Ikenson* and *J. Eric Nissley* of counsel) for Zenith Radio Corporation, defendant-Intervenor.

Sharretts, Paley, Carter & Blauvelt, P.C. (*Gail T. Cumins* and *Ned Marshak* of counsel) for plaintiffs Sanyo Electric Co. Ltd., Sanyo Electric Inc. and Sanyo Manufacturing Corporation.

Weil, Gotshal & Manges (*A. Paul Victor, Stuart M. Rosen* and *Harry M. Davidow* of counsel) for plaintiffs Matsushita Electric Industrial Co., Ltd., Matsushita Electric Corporation of America, Panasonic Hawaii, Inc., and Panasonic Sales Company, a Division of Matsushita Electric of Puerto Rico, Inc., Victor Company of Japan, and U.S. JVC Corporation.

Tanaka, Walders & Ritger (*H. William Tanaka* and *Lawrence R. Walders* of counsel) for plaintiffs Hitachi Ltd., Hitachi Sales Corporation of America, and Hitachi Sales Corporation of Hawaii.

Arent, Fox, Kintner, Plotkin & Kahn (*Stephen L. Gibson* and *Rodney F. Page* of counsel) for plaintiffs Toshiba Corporation, Toshiba America, Inc., and Toshiba Hawaii, Inc.

Baker & McKenzie (*Thomas P. Ondeck* of counsel) for plaintiff Mitsubishi Electric Corporation.

Wender, Murase & White (*Peter J. Gartland* and *Robert D. Piliero* of counsel) for plaintiff Sharp Electronics Corporation.

Siegel, Mandell & Davidson, P.C. (*Brian Goldstein* of counsel) for plaintiff General Corporation of Japan.

United States International Trade Commission, Office of the General Counsel (*Michael H. Stein*, General Counsel; *Edward M. Lebow*, Assistant General Counsel and *Michael B. Jennison*, Attorney Adviser) for the defendant United States.

WATSON, *Judge:* Defendant-Intervenor, the Zenith Radio Corporation (Zenith), has moved to dismiss this consolidated action for lack of subject matter jurisdiction. The motion is opposed by plaintiffs and by the defendant United States.

The action was brought under Section 516A(a)(2)(B)(iii) of the Tariff Act of 1930, as amended (19 U.S.C. 1516a(a)(2)(B)(iii)), by various importers and manufacturers of Japanese television receivers to challenge a determination made in 1981 [1] by the United States International Trade Commission (ITC) that an industry in the United States would be threatened with material injury if the ITC were to modify or revoke an antidumping finding made in 1971.[2] The challenged determination was made following a review under section 751(b) of the Tariff Act of 1930, as added by section 101 of the Trade Agreements Act of 1979 (19 U.S.C. 1675(b)). The original dumping finding was made under the Antidumping Act of 1921 (19 U.S.C. 160 et seq. (1970)).[3]

Although Zenith is in general agreement with the determination, it argues that the ITC has no authority to undertake a review under section 751(b) of determinations made under the Antidumping Act of 1921. In effect Zenith is arguing that, except for being subject to

[1] *Television Receiving Sets from Japan*, Inv. No. 751-TA-2, USITC Pub. 1153 (1981) 46 FR 37,702 June 24, 1981).

[2] T.D. 71-76.

[3] The Trade Agreements Act of 1979 repealed the Antidumping Act of 1921 but essentially continued its provisions into a new Title VII of the Tariff Act of 1930.

review on an annual basis to determine the amount of the antidumping duty under section 751(a) (19 U.S.C. 1675(a)), the underlying determinations that there were sales at less than fair value and that injury resulted are forever unreviewable, unmodifiable and irrevocable.

Zenith relies on a close reading of section 751 and a fine distinction between calling the final result of an antidumping investigation a "finding" under the Antidumping Act of 1921 and an "order" under the Trade Agreements Act of 1979.

The relevant part of the section under discussion reads as follows:

> (a) Periodic review of amount of duty.—
>
> (1) In general.—At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this subtitle or under section 1303 of this title, an antidumping duty order under this subtitle or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, after publication of notice of such review in the Federal Register, shall—
>
> (A) review and determine the amount of any net subsidy,
>
> (B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and
>
> (C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net subsidy or margin of sales at less than fair value involved in the agreement,
>
> and shall publish the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed in the Federal Register.
>
> (2) Determination of antidumping duties.—For the purpose of paragraph (1)(B), the administering authority shall determine—
>
> (A) the foreign market value and United States price of each entry of merchandise subject to the antidumping duty order and included within that determination, and
>
> (B) the amount, if any, by which the foreign market value of each such entry exceeds the United States price of the entry.
>
> The administering authority, without revealing confidential information, shall publish notice of the results of the determination of antidumping duties in the Federal Register, and that determination shall be the basis for the assessment of the antidumping duties on entries of the merchandise included within the determination and for deposits of estimated duties.
>
> (b) Reviews upon information or request.—
>
> (1) In general.—Whenever the administering authority or the Commission receives information concerning, or a

request for the review of, an agreement accepted under section 1671c or 1673c of this title or an affirmative determination made under section 1671c(h)(2), 1671d(a), 1671d(b), 1673c(h)(2), 1673d(a), or 1673d(b) of this title, which shows changed circumstances sufficient to warrant a review of such determination, it shall conduct such a review after publishing notice of the review in the Federal Register. In reviewing its determination under section 1671c(h)(2) or 1673c(h)(2) of this title, the Commission shall consider whether, in the light of changed circumstances, an agreement accepted under section 1671c(c) or 1673c(c) of this title continues to eliminate completely the injurious effects of imports of the merchandise.

(2) Limitation on period for review.—In the absence of good cause shown—

(A) the Commission may not review a determination under section 1671d(b) or 1673d(b) of this title, and

(B) the administering authority may not review a determination under section 1671d(a) or 1673d(a) of this title, or the suspension of an investigation suspended under section 1671c or 1673c of this title,

less than 24 months after the date of publication of notice of that determination or suspension.

(c) Revocation of countervailing duty order or antidumping duty order.—The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order, or terminate a suspended investigation, after review under this section. Any such revocation or termination shall apply with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on and after a date determined by the administering authority.

Zenith points out that section 751(b), which allows a review of various agreements and determinations (including those of sales at less than fair value and injury) and section 751(c), which allows revocation or modification, make no specific mention of "findings" under the Antidumping Act of 1921. Zenith argues that Congress was aware of the distinction between "orders" and "findings." This awareness, it asserts, is shown in section 751(a) which provides for annual review of the *amount* of duty and refers both to an antidumping duty "order" under the Trade Agreements Act and a "finding" under the Antidumping Act of 1921. In essence this is an argument which follows the maxim *expressio unius est exclusio alterius*. The specific mention of various agreements and determinations under the Trade Agreements Act in section 751(b) and the specific mention of "orders" in section 751(c) is taken to indicate an intention to exclude from review those determinations and "findings" made under the Antidumping Act.

Although this interpretation of the statute has a certain scholastic ingenuity to it, the Court finds that it does not represent the authentic legislative intention. The result reached by Zenith is at

odds with the dominant factors in the statute and the legislative history. Moreover, in a larger context, it does not represent the most plausible reading of the statutory language.

To begin with, a more straightforward and harmonious reading of the law commences with section 106(a) of the Trade Agreements Act of 1979.

> SEC. 106. CONFORMING CHANGES.
> (a) Repeal of Old Law.—The Antidumping Act, 1921 (U.S.C. 160 et seq.) is hereby repealed but findings in effect on the effective date of this Act, or issued pursuant to Court order in an action brought before that date, shall remain in effect, subject to review under section 751 of the Tariff Act of 1930.

This section makes old law "findings" subject to review under section 751 without limitation. The review it refers to must cover the underlying less than fair value and injury determinations. This is so because the "finding" was nothing more than a public notice of both the determination of the Secretary of the Treasury that sales had been made at less than fair value and the determination by the Tariff Commission that injury had resulted to a United States industry.[4] The ascertainment of the amount of duty (the annual review of which is the only review acknowledged by Zenith) was something which arose *after* the "finding." It is unlikely that Congress would have used the word "finding" in section 106(a) to describe the duty consequences of a finding and at the same time to exclude those underlying determinations which the word describes more directly, i.e., the determinations of sales at less than fair value and injury.

In this light, the mention of "findings" in section 751(a) appears to be nothing more than a punctilious reference to insure the correct timing of the annual review of the amount of duty. This subsection requires that the amount of duty be reviewed and determined once during every 12-month period. If it fixed the beginning of the 12-month period only by reference to the anniversary date of the publication of an antidumping duty "*order*", some confusion might arise over what would be the equivalent date for a matter concluded under the Antidumping Act of 1921, because the term "order" was not then in use. Thus "findings" were mentioned to avoid confusion over what event would be the "birth date" under the repealed Act. The parallelism between the "order" date under the Trade Agreements Act and the "finding" date under the Antidumping Act might not be certain otherwise. However, since the terminology for underlying

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[4] The duties of the Secretary of the Treasury in these matters were later transferred to the Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(C), 44 FR 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, January 2, 1980, 45 FR 993.

The United States Tariff Commission was renamed the United States International Trade Commission in section 171 of the Trade Act of 1974, (19 U.S.C. 2231).

determinations remained the same under both Acts, i.e., "less than fair value" and "injury," there was no reason to specify in section 751(b) those determinations made under the repealed Act.

In other words, "findings" was used in section 751(a) only to set a date. It is not even mentioned later in the same subsection (section 751(a)2, (19 U.S.C. 1675(a)(2)) when the details of the duty determination process are specifically directed only to "merchandise subject to the antidumping duty order." It is clear that by means of the relation of section 106(a) to section 751 Congress intended that there be a consistent insertion of matters determined under the Antidumping Act of 1921 into the review provisions of section 751 without further elaboration. Congress could conceivably have done what it did in section 106(a) and still made a restriction in section 751, but not without a far more explicit expression of its intent. The drastic result of restricting reviews of determinations made under the Antidumping Act of 1921 could not be done by inference or indirection.

It may be that the legislative insertion of old law determinations into all the relevant review provisions was somewhat inartful. However, aside from being a more plausible view of the review provision in context, this interpretation has the important virtue of harmonizing the Act with one of the notable Trade Agreements it was intended to implement, i.e., The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (the Antidumping Code).

Thus, in section 2(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2053(a)) Congress approved *inter alia*, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures).

Article 9 of the Agreement provides as follows:

> Duration of Anti-Dumping Duties
>
> 1. An anti-dumping duty shall remain in force only as long as, and to the extent necessary to counteract dumping which is causing injury.
>
> 2. The investigating authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review.

It is unreasonable to think that, in the very act of implementing such an agreement, Congress intended to drastically restrict the review of antidumping determinations made under the Antidumping Act of 1921. Nor could such a restriction conceivably have been made to perpetuate a conflicting provision of the Antidumping Act (one which was inconsistent with review) because no such provision existed. Indeed, if anything, the 1921 Act was amenable to the making of

reviews. This view is supported by good indications that Congress was aware that the administrative agencies were making such reviews and were revoking findings under the 1921 Act,[5] that Congress acknowledged their authority to do so[6] and made the authority explicit in the Trade Agreements Act of 1979.

Furthermore, Congress evinced a general intention to carry forward the antidumping law and its judicial and administrative precedents without substantive changes except as specifically noted.[7] Although the parallel may not be exact between the exercise of review authority and the formulation of precedent in the conventional sense of administrative interpretation of statutory terms, it belongs in the same constellation.

Zenith has also sought support for its thesis from the fact that in section 104(b) of the Trade Agreements Act [8] Congress did enact a specific provision dealing with countervailing duty orders issued under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303). Zenith asserts that this serves to emphasize that Congress made a deliberate choice in not doing the same thing for antidumping "findings." What this argument overlooks is the fact that section 104(b) was needed in order to introduce an injury determination into the continuation of old law countervailing duty orders because those orders, except as they related to articles which were free of duty, did not previously require an injury determination. See S. Rep. No. 96-249, 96th Cong., 1st Sess. 106 (1979). However, antidumping "findings" *were* based on injury determinations and it was therefore not necessary to insert that factor in the Trade Agreements Act. It follows that this special provision for old countervailing duty orders yields no inferences regarding Congressional intentions to limit the review of old antidumping findings.

The arguments engendered by this motion also touch on some provisions of the Trade Agreements Act which have no direct involve-

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[6] *Northern Bleached Hardwood Kraft Pulp from Canada*, T.C. Pub. No. 687 (Sept. 1974)
Primary Lead Metal from Australia and Canada, Inv. Nos. AA1921-134 and 135, T.D. 74-127 and T.D. 74-128 were revoked in USITC Pub. No. 772 (April 1976).

[6] S. Rep. No. 93-1236, 93d Cong., 2d Sess. 181, (1974)

[7] S. Rep. No. 96-249, 96th Cong., 1st Sess. 79 (1979)

[8] (b) OTHER COUNTERVAILING DUTY ORDERS.—

(1) REVIEW BY COMMISSION UPON REQUEST.—In the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303)—

(A) which is not a countervailing duty order to which subsection (a) applies,
(B) which applies to merchandise which is the product of a country under the Agreement, and
(C) which is in effect on January 1, 1980, or which is issued pursuant to court order in an action brought under section 516(d) of that Act before that date,

the Commission, upon the request of the government of such a country or of exporters accounting for a significant proportion of exports to the United States of merchandise which is covered by the order, submitted within 3 years after the effective date of title VII of the Tariff Act of 1930 shall make a determination under paragraph (2) of this subsection.

ment with reviews, namely, the provision in section 738 (19 U.S.C. 1673(g)) for the payment of estimated antidumping duties and the provision in section 739 (19 U.S.C. 1673(h)) stating the general authority of the appropriate customs officer to determine the antidumping duty. Both of these provisions refer only to merchandise subject to an antidumping order and do not make a direct reference to merchandise subject to a "finding" under the Antidumping Act of 1921. This led plaintiffs to argue the necessity of reading "findings" into sections 738 and 739 lest the importations of merchandise subject to "findings" escape the necessity of depositing estimated antidumping duties (a minor anomaly) or not be subject to the actual ascertainment of dumping margins (a major anomaly).

The Court is not persuaded that the possible need for resolution of difficulties in other places in the statute or the method of resolution has any bearing one way or the other on the interpretation of section 751. It therefore does not discuss the complexities of Zenith's opposing argument on this point. The solution to the difficulty in section 751 does not require a finding that Congress used the term "order" to include "findings." Section 751(b) does not even use the term "order." The inclusion of "findings" in section 751 comes about from the controlling effect of section 106(a). Beyond that, no specific mention of "findings" was needed in section 751. Indeed, had there been no reference whatsoever to "findings" in section 751(a) the inclusion of the constituent parts of "findings" in all the relevant parts of section 751 would have been even more apparent. Since the sole reference to "findings" has been found to have no implications beyond the timing of a review of the amount of duty, the result ought to be the same as if they had not been specifically mentioned at all. By the operation of section 106(a) and by the compelling force of the legislative intent embodied in the Act, the underlying determinations which resulted in "findings" are subject to review to the full extent of section 751.

In sum, the Court finds that pursuant to the review provisions of section 751(b) of the Tariff Act of 1930, as added by section 101 of the Trade Agreements Act of 1979 (19 U.S.C. § 1675(b)) the ITC has the authority to review an injury determination underlying a dumping finding made under the Antidumping Act of 1921. The determination having been made in an authorized manner the resulting action for judicial review properly comes within the subject matter jurisdiction of the Court. Accordingly, the motion to dismiss will be denied and it is so Ordered.

(Slip Op. 81–115)

THE MANHATTAN SHIRT COMPANY, PLAINFIFF, *v.* THE UNITED STATES; WILLIAM VON RABB, COMMISSIONER OF CUSTOMS; DENNIS T. SNYDER, REGIONAL COMMISSIONER OF CUSTOMS (REGION II); ANTHONY M. LIBERTA, AREA DIRECTOR OF CUSTOMS, J.F.K. AIRPORT, JAMAICA, NEW YORK, DEFENDANTS

Court No. 81–12–01609

Opinion and Order on Plaintiff's Motion for a Preliminary Injunction

[Plaintiff's motion denied.]

(Dated December 15, 1981)

Rode & Qualey, attorneys for plaintiff, by *Michael S. O'Rourke and Patrick D. Gill*, for the plaintiff.

J. Paul McGrath, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, by *Jerry P. Wiskin*, for the defendants.

FORD, *Judge:* Plaintiff has moved, pursuant to Rule 65, for a preliminary injunction. This matter was brought on by an Order to Show Cause issued by this court on December 1, 1981 and hearing was set for December 10, 1981. Plaintiff seeks to enjoin defendants, their delegates and officers and agents subordinate to them for denying entry or withdrawal from warehouse for consumption of John Henry men's fitted shirts, visaed under Textile Category 640–D, of man-made fibers, which were produced or manufactured in Korea on or after October 31, 1981. The merchandise presently before the court, entry 4701–82–354288–4, covered by protest 1001–1–013244, is sought to be released by plaintiff.

By way of background it appears that in 1972 the United States negotiated a bilateral textile and apparel import restraint agreement with twenty-five leading export countries, including Korea. The agreement covered, among other things, men's and boys' shirts, nonknit, of the dress, sport, and work type. The current bilateral agreement with Korea was negotiated in 1977 and contains two separate quotas for man-made fabric shirts, Categories 640–D and 640–O. Category 640–D covers dress shirts, while 640–O covers "other" shirts. On September 17, 1979 the United States Customs Service issued "Textile Category Guidelines for Fabric and Garments Reported Under Various Textile Authorities". This was promulgated as C.I.E. 36/79.

On September 29, 1981, the Committee for the Implementation of Textile Agreements ("CITA"), published a notice in the Federal

Register (46 F.R. 47649–50), which adjusted the 1981 twelve-month level of restraint within Textile Category 640. Category 640–O (sport shirts) was increased by over 159,000 dozen shirts, but nevertheless opened and closed on the same day. Accordingly, an embargo was placed upon sport shirts (640–O).

On October 8, 1981 "CITA" published in the Federal Register (46 FR 49939–40) a notice amending the export visa requirements for certain man-made fiber apparel products from the Republic of Korea. This notice did not cancel the requirement that the exporter place a "D" or an "O" on the visa. On or after October 13 merchandise in Textile Category 640 exported from Korea requires a visa designation of "D" or "O" which agrees with the customs classification. In the case at bar the shirts were imported under a 640–D visa. The Customs Service refused entry of the merchandise based upon their position that they are not properly classifiable under the TSUS numbers designated for Textile Category 640–D. At the time of attempted entry Textile Category 640–O was filled and the merchandise embargoed. The quota, however, for dress shirts at that time was not filled.

Plaintiff filed a protest on November 4, 1981 pursuant to the provisions of 19 U.S.C. 1514(a)(4) and 19 CFR 174.21(b), against the exclusion of merchandise covered by Warehouse Entry WH 4701–82–354288–4. Request was made for expedited treatment and for referral to Import Specialist Bayer who has indicated the protest would be denied. On November 13 counsel for plaintiff was called by Customs to ascertain the location of the warehouse where the merchandise was stored. On November 16, 1981 plaintiff's counsel was advised that the warehouse entry could not be located. On November 18, 20, 23, 24, and 25 additional calls were placed to officials in the protest section requesting the protest be forwarded to Import Specialist Bayer. The protest was denied on November 27, 1981 and this action commenced December 1, 1981 by the filing of a Summons and Verified Complaint, an Order to Show Cause and a Motion for a Preliminary Injunction.

In paragraph 1 of its complaint plaintiff alleges the court has jurisdiction pursuant to 28 U.S.C. 1581(a), 1581(h), 28 U.S.C. 1581(i)(3)(4), and 28 U.S.C. 1585. Inasmuch as plaintiff has filed a protest which has been denied under section 515 of the Tariff Act of 1930 and has instituted a timely action in this court by the filing of a Summons and Complaint, this court has jurisdiction under 28 U.S.C. 1581(a). It is, therefore, not necessary to consider the applicability of the remaining sections under which jurisdiction is claimed.

In enacting the Customs Courts Act of 1980, Congress stated the court "is to be guided by the same factors utilized by a federal district

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court when it considers a request for a preliminary injunction" (H.R. Rep. No. 1235, 96th Cong., 2d Sess. 61 (1980)). The factors utilized by the district court are set forth by Judge Markey in *S. J. Stile Associates Ltd.* v. *Dennis Snyder, et al.*, 67 CCPA —, C.A.D. 1261, 646 F. 2d 522 (1981). The court set forth the following as requisites for a preliminary injunction:

> (1) A threat of immediate irreparable harm;
> (2) that the public interest would be better served by issuing than by denying the injunction;
> (3) a likelihood of success on the merits; and
> (4) that the balance of hardship on the parties favored appellant. *Grimard* v. *Carlston*, 567 F. 2d 1171, 1173 (CA 1 1978); 11 C. Wright and A. Miller, Federal Practice and Procedure § 2948 (1973); see generally, Developments in the Law—Injunctions, 78 Harv. L. Rev. 944 (1965).

Due to the extraordinary nature of preliminary injunctions the courts have long required that such relief be utilized sparingly. *Asher* v. *Laird*, 475 F. 2d 360 (C.A.D.C. 1973), *Dormann* v. *Boozer*, 414 F. 2d 360 (C.A.D.C. 1969).

At the hearing held on December 10, 1981, plaintiff called four witnesses on its behalf and defendant called one witness. The record establishes the imported shirts were excluded from classification by virtue of having a square shirttail. The evidence adduced at the hearing, for the purpose of establishing likelihood of success, indicates the shirts meet all the requirements of a dress shirt except for the square tail. A substantial amount of evidence was also adduced with respect to irreparable harm. Even if the court were to assume plaintiff has established a threat of irreparable harm and likelihood of success and has further established that the balance of hardship inures in favor of plaintiff, the court must still consider the question of public interest, since this case involves quotas arrived at as a result of an agreement between the United States and the Republic of Korea.

Plaintiff's motion for a preliminary injunction, if granted, would result in plaintiff obtaining the ultimate relief it hopes to obtain after a trial on the merits, i.e., the release of the merchandise into the trade and commerce of the United States.

This question was considered in *Associated Dry Goods Corporation* v. *United States, et al.*, 1 CIT—, Slip Op. 81–47, wherein Judge Re made the following observation:

> In cases which seriously affect the public interest, a court of equity will require a much stronger showing before granting a preliminary injunction than is required when only private interests are at stake. *Virginia Ry. Co.* v. *System Federation*, 300 U.S. 515, 552 (1937). In cases of serious doubt, the discretion of the court must be exercised in a manner that would achieve the larger

objectives of the public interest. See *Hecht Co.* v. *Bowles*, 321 U.S. 321, 331 (1944).

A preliminary injunction should be denied if it will adversely affect the public or other interested parties for which, even temporarily, an injunction bond cannot compensate. *Virginia Ry. Co.* v. *United States*, 272 U.S. 658, 674 (1926). The court should withhold such relief until a final determination of the controversy, even though the delay may be burdensome to the plaintiff. *Yakus* v. *United States*, 321 U.S. 414, 440 (1944). *See also Virginia Petroleum Jobbers Association* v. *F.P.C.*, 259 F. 2d 921, 927 (D.C. Cir. 1958).

Assuming plaintiff has overcome the burden of showing the probability of irreparable harm and the likelihood of success on the merits, or alternatively, that the parties have presented serious questions of law and that the balance of the hardships tips in favor of the plaintiff, the court must still protect the public interest.

The court therein further stated:

Preliminary injunctions are generally granted to preserve the status quo pending final determination of the controversy between the parties. *Holiday Tours*, at 844; *Hunter* v. *Atchison, T. & S.F. Ry. Co.*, 188 F. 2d 294, 298 (7th Cir. 1951). When the granting of a motion for preliminary injunction would give a plaintiff all the advantages which would be obtained as a result of a final favorable adjudication of the controversy, the motion ordinarily should be denied. *Selchow & Righter Co.* v. *Western Printing & Lithographing Co.*, 112 F. 2d 430, 431 (7th Cir. 1940).

In this case the requested injunction sought is against the enforcement of a quantitative restriction of general application on importations. Hence the plaintiff does not seek to preserve the status quo, but rather seeks to change it for its own pecuniary advantage. It is equally clear that a change would necessarily involve the temporary lifting of the existing restriction to permit plaintiff' importations to enter the stream of commerce throughout the United States. The market disruption repercussions are impossible to calculate in advance. Certainly they would inevitably affect the public interest and those of third parties in ways which could not possibly be compensated by an injunction bond. No bond could indemnify all of the interests affected, directly or indirectly, by the temporary lifting of the quantitative limitations.

The granting of plaintiff's request for an interlocutory injunction would achieve the ultimate relief sought in this action.

In the case at bar, since the requested injunction is against the enforcement of embargoed merchandise, it is not one which seeks to retain the status quo. A court should not grant temporary relief in the form of a preliminary injunction which will dispose of the case on the merits. *Dunn* v. *Retail Clerks Int'l. Ass'n. A.F.L.–C.I.O., Local 1529*, 299 F. 2d 873 (C.A. 6 1962). This being the fact, coupled with the question of public interest, the court concludes that the

potential harm to the public interest outweighs the potential injury to plaintiff.

Under all of the circumstances, it is the determination of the court that plaintiff request for a preliminary injunction be denied.

For the foregoing reasons it is hereby:

ORDERED that plaintiff's motion for a preliminary injunction be and the same hereby is denied; and it is

FURTHER ORDERED that defendant file its answer to the plaintiff's complaint on or before December 20, 1981.

(Slip Op. 81–116)

HOUSE OF ADLER, INC., ET AL., PLAINTIFFS, *v.* THE UNITED STATES, DEFENDANT

Court No. 78–9–01715

Before WATSON, *Judge*.

Valuation

The government's valuation of diamonds, precious and semi-precious stones and other jewelry items imported from Hong Kong was proven to be incorrect.

Although plaintiffs failed to prove their claimed value, the Court finds it appropriate to remand the matter to the District Director at the Port of Honolulu for a new determination of value. 28 U.S.C. 2643 discussed.

[Remanded for further administrative proceedings.]

(Dated December 16, 1981)

Glad, White & Ferguson (*Edward N. Glad* at the trial and on the briefs) for plaintiffs.

J. Paul McGrath, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Jerry P. Wiskin* at the trial and on the brief), for defendant.

WATSON, *Judge:* This action challenges the valuation of diamonds, precious and semi-precious stones, jade and other jewelry items which were exported from Hong Kong in the years 1972 through 1974. The exportations were made by the House of Adler, Ltd., in Hong Kong (Adler Hong Kong) and were imported for its parent corporation, House of Adler, Inc. (Adler U.S.). They were entered at the Port of Honolulu.

All the merchandise was appraised on the basis of export value, as defined in section 402(b) of the Tariff Act of 1930, *as amended by*

the Customs Simplification Act of 1956, (19 U.S.C. 1401a(b) (1976)).[1] For the most part the loose diamonds were appraised at the invoiced unit values plus 45 percent, packed.[2] The other stones and jewelry were appraised at the invoiced unit values, less 13.04 percent, plus 20 percent, plus commission, packed.

Plaintiffs first claim that the correct export value should be the invoiced values, less ocean freight and insurance, plus 1½ percent for the loose diamonds or 15 percent for the remaining merchandise. Alternatively, plaintiffs claim valuation under United States Value as provided in section 402(c) of the Tariff Act of 1930, *as amended supra* (19 U.S.C. 1402a(c) (1976)) [3] at a value equal to the invoiced unit values less any included ocean freight and insurance, packed.

At the trial, the plaintiffs offered the testimony of Jacques H. Adler, who is both the president of Adler U.S. and the Chairman of Adler Hong Kong and Gerard J. Grenier, a director and treasurer of Adler U.S., and its chief financial officer. Plaintiffs also offered the affidavit of Mary Hu Chao Sze Leung, the general manager of Adler Hong Kong during the relevant period. In addition, plaintiffs introduced in evidence two sets of interrogatories answered by the defendant.

From the answers to the interrogatories, it appears that the appraisement was predicated on a finding that Adler Hong Kong was selling such or similar merchandise to unrelated purchasers. However, from the testimony and other evidence it is clear that Adler Hong Kong made no such sales and only conducted export transactions with

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[1] (b) For the purposes of this section, the export value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States.

[2] In Entry No. 113521 they were appraised at invoiced unit values less ocean freight and insurance, plus 45 percent. In Entry No. 107634 they were appraised at invoiced unit values, plus 45 percent, plus commissions, packed.

[3] (c) For the purposes of this section, the United States value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal market of the United States for domestic consumption, packed ready for delivery, in the usual wholesale quantities and in the ordinary course of trade, with allowances made for—

(1) any commission usually paid or agreed to be paid, or the addition for profit and general expenses usually made, in connection with sales in such market of imported merchandise of the same class or kind as the merchandise undergoing appraisement;

(2) the usual costs of transportation and insurance and other usual expenses incurred with respect to such or similar merchandise from the place of shipment to the place of delivery, not including any expense provided for in subdivision (1) of this subsection; and

(3) the ordinary customs duties and other Federal taxes currently payable on such or similar merchandise by reason of its importation, and any Federal excise taxes on, or measured by the value of, such or similar merchandise, for which vendors at wholesale in the United States are ordinarily liable.

If such or similar merchandise was not so sold or offered at the time of exportation of the merchandise undergoing appraisement, the United States value shall be determined, subject to the foregoing specifications of this subsection, from the price at which such or similar merchandise is so sold or offered at the earliest date after the importation of the merchandise undergoing appraisement.

Adler U.S. The purpose of these transactions was to return to Adler U.S. a variety of stones and jewelry which had been accumulated in Hong Kong after the closing of numerous Far Eastern branches of Adler U.S.

The price of the transaction by which they were returned to Adler U.S. was arrived at by a formula devised by Mr. Adler and designed to compensate Adler Hong Kong for handling: To the price at which Adler U.S. had originally acquired these items from Belgium or elsewhere was added 1½ percent for loose diamonds and 15 percent for the remainder.

The argument by plaintiff that export value is represented by the prices of the transaction between Adler Hong Kong and Adler U.S. is unacceptable. Although the price between the two may have been a genuine attempt to approximate a market value, considering the unity of control and the entirely synthetic manner in which the price was set, there could be no export value derived from the transaction itself. See *D. H. Baldwin Co. et al.* v. *United States*, 65 CCPA 67, C.A.D. 1208, 577 F. 2d 704 (1978).

At this juncture it is plain that the government was wrong to base an export value on sales by Adler Hong Kong to other unrelated purchasers and plaintiffs are wrong to think that the transaction between Adler Hong Kong and Adler U.S. could generate an export value.

This leaves plaintiffs' alternative claim for the use of United States value, which is used when no export value exists. However, defendant argues that plaintiffs have introduced evidence which proves that an export value did indeed exist, if not in the transactions of Adler Hong Kong then in the sales of similar merchandise by its competitors. Although this overstates the impact of the evidence, it is true that portions of the affidavit of the manager of Adler Hong Kong suggest the possibility that an export value may have existed for similar merchandise sold by competitors. This possibility is left open by the statement of Ms. Leung that "our competitors in Hong Kong generally add a 15 percent markup to their cost of jewelry for sales of similar types of merchandise to wholesalers for exportation to the United States."

Of course the mere fact that competitors sell for export to the United States does not mean that they do so in a manner which establishes an export value. Moreover, defendant earlier took pains to deprecate the value of Ms. Leung's affidavit for use as confirmation of the authenticity of the prices of Adler Hong Kong when those were being claimed to represent export value.[4] It is somewhat anomalous

[4] Defendant's brief, p. 10, footnote 3.

for the government to attack the affidavit with respect to its description of how the competitors set their prices and yet rely on the affidavit as support for the fact that competitors did sell similar merchandise in circumstances which generated an export value. Nevertheless the existence of sales for export of similar merchandise suggests that export value may yet possibly be the proper basis of appraisement for these articles. However, on the present state of the record the Court can only reach one conclusion and that is that the appraisement was erroneous. The correct appraisement remains an open question. It may still be export value based on the prices of other sellers or it may have to be United States value.

In these circumstances plaintiff asks the Court to exercise its power of remand under 28 U.S.C. 2643(b) and require the District Director at the Port of Honolulu to make another appraisement of the merchandise. Defendant argues that remand ought to be granted only for reasons similar to a rehearing or retrial, i.e., to rectify a serious flaw in the conduct of the original judicial proceeding. This rather restrictive standard however is inappropriate for remand which is intended, not to correct a defect in the judicial proceeding, but to aid in the proper completion of administrative decisions which have been proven to be incorrect. The legislative history[5] makes it clear that these powers were intended *inter alia* to allow the Court an alternative to dismissing the case of a plaintiff who had demonstrated that the administrative decision was incorrect but was unable to establish the correct result. The defendant will be given an opportunity to make a new determination as to the value and will then report the determination to the Court. The Court will then decide whether further judicial proceedings are required. It is therefore Ordered that this matter is remanded to the District Director at the Port of Honolulu for disposition in accordance with this opinion, the results to be reported to the Court within 120 days from the date of entry of this Order.

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[5] H. Rep. No. 96-1235, 96th Cong., 2d Sess. 60-61 (1980).

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *December 22, 1981.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P81/188	Ford, J. Dec. 16, 1981	Aerospatiale Helicopter Corporation	80-10-01566	Duty assessed on full value of merchandise at rates of duty not disputed	Item 806.20 Duty only upon cost or value of alterations or repairs; amounts shown on invoices as cost or value of alterations or repairs are correct	Agreed statement of facts	Houston American goods returned; aircraft components and parts; merchandise exported for repairs or alterations and reimported after having been previously imported and duty-paid
P81/189	Ford, J. Dec. 16, 1981	Ehrenreich Photo-Optical Ind., Inc.	77-5-00854, etc.	Item 722.80 9.5% (items marked "A") Not stated (items marked "B")	Item 722.32 7.5% (items marked "A") Item 722.04 6% (items marked "B")	Agreed statement of facts	New York Film magazines (magazine is a necessary part of motion picture camera) (items marked "A") Motion picture camera and magazine; entirety consisting of one film magazine with each camera included in same entry (items marked "B")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P81/190	Watson, J. Dec. 16, 1981	American Hoechst Corp.	78-11-02065	Item 799.00 9%, 8%, 7%, 6% or 5%	Item 437.76 Free of duty	Certified Blood Donor Services, Inc. v. U.S. (C.A.D. 1147) Certified Blood Donor Services, Inc. v. U.S. (C.D. 4830)	New York Various diagnostic sera
P81/191	Watson, J. Dec. 17, 1981	American Hoechst Corp.	79-2-00358	Item 799.00 5%	Item 437.76 Free of duty	Certified Blood Donor Services, Inc. v. U.S. (C.A.D. 1147) Certified Blood Donor Services, Inc. v. U.S. (C.D. 4830)	New York Various diagnostic sera
P81/192	Watson, J. Dec. 17, 1981	Behring Diagnostics Inc. et al.	71-4-00017, etc.	Item 799.00 9%, 8%, 7%, 6% or 5%	Item 437.76 Free of duty	Certified Blood Donor Services, Inc. v. U.S. (C.A.D. 1147) Certified Blood Donor Services, Inc. v. U.S. (C.D. 4830)	New York Various diagnostic sera

P81/193	Watson, J. Dec. 17, 1981	Behring Diagnostics Div., et al.	76-3-00762, etc.	Item 799.00 9%, 8%, 7%, 6%, or 5%	Item 437.76 Free of duty	Certified Blood Donor Services, Inc. v. U.S. (C.A.D. 1147) Certified Blood Donor Services, Inc., v. U.S. (C.D. 4830)	New York Various diagnostic sera
P81/194	Watson, J. Dec. 17, 1981	Certified Blood Donor Services, Inc., et al.	68/54040, etc.	Item 799.00 9%, 8%, 7%, 6%, or 5%	Item 437.76 Free of duty	Certified Blood Donor Services, Inc. v. U.S. (C.A.D. 1147) Certified Blood Donor Services, Inc. v, U.S. (C.D. 4830)	New York Various diagnostic sera
P81/195	Watson, J. Dec. 17, 1981	Certified Blood Donor Services, Inc., et al.	70/33032, etc.	Item 799.00 9%, 8%, 7%, 6%, or 5%	Item 437.76 Free of duty	Certified Blood Donor Services, Inc. v. U.S. (C.A.D. 1147) Certified Blood Donor Services, Inc. v. U.S. (C.D. 4830)	New York Various diagnostic sera

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/487	Ford, J. Dec. 17, 1981	Celebrity Inc.	79-9-01385	Export value	Invoice unit values shown on commercial invoices of subject entry papers	Agreed statement of facts	New York Mirrors, brushes, cosmetic articles, etc.
R81/488	Watson, J. Dec. 17, 1981	Imported Rug Associates, Ltd.	R62/13518, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Philadelphia Rugs

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, DECEMBER 29, 1981

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

In the Matter of CERTAIN CUBE PUZZLES	Investigation No. 337–TA–112

Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 17, 1981, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Ideal Toy Corp., 200 Fifth Ave., New York, New York 10010. An amended complaint was filed on December 14, 1981. The complaint alleges unfair methods of competition and unfair acts in the importation of certain cube puzzles into the United States, or in their sale, by reason of the alleged (1) infringement of complainant's common law trademark, (2) false designation of origin by reason of copying complainant's trade dress, and (3) passing off of respondents' cube puzzles as those of complainant. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that, during the pendency of the investigation, the Commission issue a temporary exclusion order, prohibiting importation of said articles into the United States except under bond, and, after a full investigation, the Commission issue

both a permanent exclusion order and a permanent cease and desist order.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in section 210.12 of the Commission's Rules of Practice and Procedure.

SCOPE OF THE INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on December 16, 1981, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(b)), an investigation be instituted to determine whether there is reason to believe there is a violation and whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain cube puzzles into the United States, or in their sale, by reason of the alleged (1) infringement of complainant's common law trademark, (2) false designation of origin by reason of copying complainant's trade dress, and (3) passing off of respondents' cube puzzles as those of complainant, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—
Ideal Toy Corp.
200 Fifth Ave.
New York, N.Y. 10010

(b) The respondents are the following persons, alleged to be in violation of section 337, and are parties upon which the complaint is to be served:

Atco Electronics, Ltd.
1191 Broadway
New York, N.Y. 10001

BMJ Trading, Ltd.
12 East 33rd Street
New York, N.Y. 10016

Chinese Arts & Crafts
537 S. Western Avenue
Los Angeles, Calif. 90020

Continental Variety
1127 Broadway
New York, N.Y. 10010

Metro Charles Co., Inc.
1220 Broadway
New York, N.Y. 10001

Pan-Lon International, Inc.
1147 Broadway
New York, N.Y. 10001

P.G. Continental, Inc.
558 Pilgrim Drive, Suite A
Foster City, Calif. 99404

Plawner Toy Mfg. Corp.
250 Route 17
Lodi, New Jersey 07644

Global Imports
160 Fifth Avenue
New York, N.Y. 10010

John N. Hansen Co.
369 Adrian Blvd.
Milbrae, Calif. 94030

The Super Game Corp.
6330 N. Califormia Avenue
Chicago, Ill. 60659

Vanguard Jewelry Corp.
1178 Broadway
New York, N.Y. 10001

Henry Wedermeyer Inc.
41 Madison Avenue
New York, N.Y. 10010

A & H Ltd.
P.O. Box 67–774
Taipei, Taiwan

Abtron Industrial Corp.
5th Fl., No. 230, Sec. 4
Jen Ai Rd.
Taipei, Taiwan

All Strong Enterprises Co., Ltd.
P.O. Box 6–36
Peitou
Taipei, Taiwan

Alpha & Beta Toys Industrial Co., Ltd.
P.O. Box 67–338,
Taipei, Taiwan

Bayeast Industrial Co., Ltd.
9th Fl., No. 97, Nanking E. Rd., Sec. 2
Taipei, Taiwan

Chainteef Corp. Ltd.
Shui-Yuan Building, 4th Fl.
No. 134, Shih Ta Rd.
Taipei (107), Taiwan

Chi Mei Trading Co., Ltd.
10th Fl., No. 27 Chang-An E. Rd.
P.O. Box 9–100
Taipei, Taiwan

Rand International
11 Lawson Lane
Great Neck, N.Y. 11023

Jack Stern
d/b/a Worldwide Discount
22 Cornell Drive
Great Neck, N.Y. 11020

Chin Yuee Industrial Co., Ltd.
P.O Box 68–1500
Taipei, Taiwan

Chiu Hop Enterprise Corp.
4th Fl., No. 9, Lane 38
Sung Chiang Rd.
Taipei, Taiwan

Chi-Wei Enterprise Co., Ltd.
3rd Fl., No. 116
Nanking E. Rd., Sec. 5
Taipei, Taiwan

Chumunion C.L.W. International Corp.
10th Fl., 121 Jen Ai Rd., Sec. 3
Taipei, Taiwan

The Coaster Co., Ltd.
P.O. Box 68–446
Taipei, Taiwan

Dah Chiang Industrial Co., Ltd.
P.O. Box 19
Ru Tsuo H. Hsiang
Taipei Hsien, Taiwan

Dargen Co., Ltd.
2nd Fl., 1–1, Lane 129
Chang An E. Rd., Sec. 2
Taipei, Taiwan

Doddiu Enterprise Co., Ltd.
P.O. Box 8–323
Taipei, Taiwan

Evercheering Enterprise Co., Ltd.
P.O. Box 3576
Taipei, Taiwan

Ever New Products International Corp.
P.O. Box 17–48
Taipei, Taiwan

Excellent Metal Industrial Corp.
P.O. Box 112, Hsin Chuang
Taipei, Taiwan

Gaiety Trading Co., Ltd.
No. 38, Alley 29, Lane 291
Nanking, E. Rd. Sec. 5
Taipei 105, Taiwan

Gameking Industry Co., Ltd.
P.O. Box 7–467
11th Fl., No. 88, Sec. 8
Chungking S. Rd.
Taipei, Taiwan

Gem Gem & Co., Ltd.
P.O. Box 47–51
Taipei (103), Taiwan

Giocoso Products Co., Ltd.
No. 76, Chuang Shan N. Rd.
Sec. 1, 2nd Fl.
P.O. Box 46–608
Taipei, Taiwan

Good Partner Corp. Ltd.
P.O. Box 19–162
Taipei, Taiwan,
or
2 Fl., No. 3, Lane 13,
Shieh Chu Wei St.,
San Chung City
Taipei, Taiwan

Hanlon Products Corp.
2 Fl., No. 7–2, Lane 93
Chung Shan N. Road, Sec. 2
P.O. Box 59043
Taipei, Taiwan

Happy-Home Electro & Hardware Works S.A.
P.O. Box 55–0624
7 Lane, 539 Cheng Teh Rd.
Taipei, Taiwan

Jacktune Co., Ltd.
P.O. Box 84–312
Taipei, Taiwan

Jen Shin National Co., Ltd.
P.O. Box 1998
Taipei, Taiwan

Junn-Ho Enterprise Co., Ltd.
3rd Fl., No. 90, Lern-Ai Rd., Sec. 3
Taipei, Taiwan

JWU Lih Shing Yeh Co., Ltd.
2nd Fl., No. 143 Chun
Shan Rd., Sec. 3
Chung Ho City,
Taipei, Taiwan

KTC (Taiwan), Inc.
P.O. Box 67–695
Taipei, Taiwan

Kan Shin Trading Co., Ltd.
P.O. Box 10153
No. 18, Lane 14
Di-Hwa St., Sec. 1
Taipei, Taiwan

Key Men Co., Ltd.
P.O. Box 91–321
Taipei, Taiwan

King Swey Enterprises Co., Ltd.
P.O. Box 68–2328
Taipei, Taiwan

Honbin International
Co., Ltd.
Fl. 1, 350 Fu Hsing N. Rd.
Taipei, Taiwan

Lee Tata International
Corp.
P.O. Box 53–196
Taipei, Taiwan

Liang Hwa Toys Co., Ltd.
P.O. Box 40–64
2d Fl., 199, Tzu Chiang Rd.,
Sec. 1
San-Chung City
Taipei, Taiwan

Linca Co., Ltd.
6, Alley 24
Lane 208
Zui An St.
P.O. Box 7–185
Taipei, Taiwan 106

Long Ten-Ten Industrial
Co., Ltd.
3 Fl., No. 380–8
Chung Hou St.
P.O. Box 138
Pei-Tou
Taipei, Taiwan

Lonvy Enterprise Co.
P.O. Box 16–510
Taipei, Taiwan

Maruwa Gain Corp.
No. 15–1, Alley 2, Lane 250
Nanking E. Rd., Sec. 5
P.O. Box 48–371
Taipei, Taiwan

Ming Juo Industries
Co., Ltd.
Rm 6, 7 Fl., No. 69
Lane 390 Tuo Hua S. Rd.
P.O. Box 53–1056
Taipei, Taiwan

Motee Enterprises
(Taiwan), Inc.
3 Fl., No. 39, Sec. 2
Hsin-Sheng N. Road
P.O. Box 39–599
Taipei, Taiwan

Lee Tai Industrial
Co., Ltd.
P.O. Box 46–578
Taipei, Taiwan

Multi-Bri Inc.
P.O. Box 24–818
No. 68, Dah Daw Road
Taipei, Taiwan 106

Nissho Trading
Co., Ltd.
8–16–3–chome, Higashi-
Mukojima
Sumida-ku, Tokyo, Japan

Olivewood Enterprise
Co., Ltd.
No. 30, Lane 60, Kuang
Fu N. Rd.
P.O. Box 36–114
Taipei, Taiwan

Orient International
Corp.
P.O. Box 59394 Taipei
28–1, Lane 96, Chung Shan
N. Rd., Sec. 2
Taipei, Taiwan

Otto International Corp.
5th Fl., No. 103 Roosevelt
Rd., Sec. 2
Taipei, Taiwan

Outpost Enterprise
Co., Ltd.
P.O. Box 24–598
Taipei, Taiwan

Oxo Toy Corp.
P.O. Box 68–84
Taipei, Taiwan

Pan International Ltd.
(Taiwan)
Rm. 1020, 10th Fl., No. 90
Chun Hwa Rd., Sec. 1
Taipei, Taiwan

Penn Brother Industrial Co., Ltd.
P.O. Box 36–440
Taipei, Taiwan

Robert S. Hong & Co., Ltd.
P.O. Box 8–59
Taipei, Taiwan

Rongine International Corp.
6th Fl., 259–262:
Chung Hsiao East Rd. Sec. 5
Taipei 105, Taiwan

Royce Enterprise Co., Ltd.
P.O. Box 18–113
Taipei, Taiwan

S.L. Co., Ltd.
P.O. Box 91–77
Taipei, Taiwan

San Wu Hong Co., Ltd.
P.O. Box 68–410
239, Tihwa St., Sec. 1
Taipei, Taiwan

San Yu Inc.
55 Min Teh Rd.
Wu Ku Hsiang
Taipei Hsein, Taiwan

Sharer Enterprises Co., Ltd.
P.O. Box 55–32
Taipei, Taiwan

Sun Ching Industrial Corp.
P.O. Box 8–344
Taipei, Taiwan

Sundry Products, Inc.
P.O. Box 58947
No. 16, Alley 9,
Lane 31, Sec. 5
Nanking East Road
Taipei, Taiwan

Top Sales Corp.
P.O. Box 3029
Mucha, Taipei, Taiwan

Sung Shang Enterprise Co., Ltd.
No. 84, Lane 920, Chung Shan Rd., Sec. 2
Chung Hwa, Taiwan

Sunseed Corp.
5th Fl., 271
Chung Hsiao E. Rd., Sec. 3
Taipei, Taiwan

Taifa Polymer Corp.
Al-li Yuan Building, 5th Fl.
78 An-Ho Road
P.O. Box 26–370
Taipei, Taiwan

Taiwan Sports & Trading Ltd.
P.O. Box 59024
Taipei, Taiwan (100)

Taiwell (Toys) Enterprise Inc.
P.O. Box 17–331
Taipei, Taiwan

Tapou Industries Co., Ltd.
5/F No. 50 Nanking E. Rd., Sec. 5
P.O. Box 48–104
Taipei, Taiwan

Tay Horng Enterprise Co., Ltd.
No. 42, Lane 156, Hsi Wei St.
Sanchung City, Taiwan

Teh Yor Industrial Co., Ltd.
129, 2nd Fl., Chung Shan N. Rd., Sec. 1
Taipei, Taiwan 104

Thumb Enterprise Co., Ltd.
P.O. Box 84–421
Taipei, Taiwan

Tip Top & Co., Ltd.
P.O. Box 45–86
Taipei, Taiwan

Whole Yean Industry Corp.
P.O. Box 67–268
Taipei, Taiwan

Torng Huei Enterprise Co., Ltd.
P.O. Box 19–220
Taipei, Taiwan

Torng Yih Enterprise Co., Ltd.
P.O. Box 48–59
Taipei 105, Taiwan

Trades-Man Industrial Co., Ltd.
P.O. Box 39–276
Taipei, Taiwan

Vuzu Development Corp.
213 Rau-her Street
P.O. Box 18–61
Taipei 105, Taiwan

Wiland International Corp.
P.O. Box 14–138
Taipei, Taiwan

William Woo Int'l (Taiwan) Ltd.
P.O. Box 53–202
Taipei, Taiwan

Ying Hui Co., Ltd.
P.O. Box 1345
Taipei, Taiwan

Jack Young Ltd.
P.O. Box 107
Peitou, Taipei, Taiwan

(c) Ralph Elsas-Patrick, Unfair Import Investigations Division, U.S. International Trade Commission, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than twenty (20) days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Ralph Elsas-Patrick, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–0440.

By order of the Commission.

Issued: December 23, 1981.

KENNETH R. MASON,
Secretary.

(332–134)

CONDITIONS RELATING TO THE IMPORTATION OF CANADIAN SOFTWOOD LUMBER INTO THE UNITED STATES

AGENCY: United States International Trade Commission.

ACTION: At the request of the Committee on Finance of the U.S. Senate and following receipt of a request from the Chairman of Subcommittee on Trade of the Committee on Ways and Means of the U.S. House of Representatives on December 4, 1981, and December 8, 1981, respectively, the U.S. International Trade Commission instituted investigation No. 332–134 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of gathering and presenting information on softwood lumber imports from Canada and the factors affecting the competitiveness of U.S. producers of softwood lumber. This study will present a profile of the United States and Canadian markets and industries, with an emphasis on the costs of producing softwood lumber in the U.S. Pacific Northwest and in British Columbia.

EFFECTIVE DATE: December 16, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. William Hoffmeier or Mr. Jeff Wood, Agriculture, Animals and Forest Products Division, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202–724–1766 or 202–724–0095, respectively.

BACKGROUND: The Committee on Finance requested that the Commission report include, in particular, information with respect to:

1. The U.S. market (United States and Canadian factors of competition including a discussion of imports, production including multinational operations, and consumption).
2. A comparison of stumpage prices and appraisal methods.
3. A comparison of fixed and variable costs of production.
4. A comparison of transportation costs.

5. A comparison of marketing practices (including a discussion of the impact of Canadian softwood lumber on the various regions of the U.S. market).

6. A comparison of Government policies and regulations and their influence on the softwood lumber industry.

The Committee asked that the Commission transmit its report not later than 4 months after receipt of the request.

The Chairman of the Subcommittee on Trade of the Committee on Ways and Means requested that the report include, in addition to a review of the composition of the industry in both countries, "a comparative analysis of the stumpage appraisal systems, industry wage rates, nature of forest resources, forest policy, employment policy as it relates to this industry, methods of taxation, and profit and risk allowances."

PUBLIC HEARING: A public hearing in connection with the investigation will be held in Room 223, Federal Center Building, 1220 SW 3rd Street, Portland, Oregon, on February 17, and 18, 1982. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, February 12, 1982.

WRITTEN SUBMISSIONS: In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than February 20, 1982. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

By order of the Commission.

Issued: December 18, 1981.

KENNETH R. MASON,
Secretary.

In the matter of CERTAIN AIRTIGHT WOOD STOVES	Investigation No. 337–TA–92

Notice of Denial of Motion To Withdraw Action and Order of Termination and To Order Hearing

AGENCY: U.S. International Trade Commission.

ACTION: Denial of motion to withdraw action and order of termination and to order hearing.

SUPPLEMENTARY INFORMATION: On November 2, 1981, the Commission received a Motion to Withdraw Action and Order of Termination and Order Hearing (Motion 92–13) from Energy Harvesters Corp., the complainant in the above-captioned investigation. Complainant requests that the motion be granted because the Commission's ordering of the termination of the investigation without a hearing allegedly violates the Fifth Amendment to the U.S. Constitution and 5 U.S.C. 554.

This motion follows the termination of this investigation on October 9, 1981 based upon mootness. The Commission stated in its Memorandum Opinion of October 9, 1981, that as a result of the issuance of consent orders in investigation No. 337–TA–106 the stove under investigation in this case was no longer to be imported. Thus, Energy Harvesters had already received all of the relief that it could possibly receive under section 337.

On December 14, 1981, the Commission denied Energy Harvesters' motion. Copies of the Commission's Action and Order and all other nonconfidential documents in the record of this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Neeley, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0359.

By order of the Commission.

Issued: December 17, 1981.

KENNETH R. MASON,
Secretary.

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